



Frequently Asked Questions

TREATMENT OF NONCONFORMITIES

PART I. STRUCTURES

WHAT IS A LEGAL, NONCONFORMING STRUCTURE IN THE MIAMI 21 CODE?

A legal nonconforming structure is one built legally before the Miami 21 Code comes into effect, where certain conditions of the structure will become inconsistent with the code after the adoption of the Miami 21 Code.

Example:

A building was built at a five story height under the existing code. Miami 21 has recommended that the height in this particular area be limited to a total of three stories. After Miami 21 is adopted, in this example, only the additional height (i.e. two-stories), will be “nonconforming”. That additional height, built under a prior code, is considered “grandfathered” indefinitely.

BACKGROUND:

The city's zoning code has **always** regulated the basic framework for building height, lot coverage, setbacks, etc. Over the years there have been revisions and overlays created to address certain special situations which have resulted in an overly complicated and occasionally inconsistent treatment of land use.

MIAMI 21 DOES NOT CHANGE ANY OF THE EXISTING PROVISIONS REGARDING THE CLASSIFICATION OF NONCONFORMING STRUCTURES.

WON'T THE MIAMI 21 CODE MAKE MOST SINGLE-FAMILY HOMES NONCONFORMING?

No, Miami 21 will not make most homes nonconforming; however, there will be a fair number of instances when ***some parts*** of the homes will become nonconforming.

Example:

A homeowner already has a two-car garage on the front of the house that occupies almost two-thirds of the frontage. As Miami 21 seeks to limit the size of the garage on the front, the existing garage structure would become legally nonconforming.

The nonconforming garage could remain indefinitely; the owner would not be required to demolish it.

WILL THE PROPERTY OWNER WITH THE LEGALLY NONCONFORMING GARAGES BE ALLOWED TO MAKE IMPROVEMENTS, FOR EXAMPLE, CONSTRUCT AN ADDITION TO THE HOUSE?

Yes, the nonconformity of the garage may remain indefinitely, and the owner has a right to build additions elsewhere on the property, as long as the addition does not *increase* the nonconformity of the garage

Example:

The owner of the home with the two-car garage also encroaches one foot into the required five foot side setback. The owner proposes to build an addition to the rear of the home. Because the addition will not encroach into the rear setback, the owner may legally construct the addition. ***The owner would not be required to remove the garages.***



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IF A LEGAL NONCONFORMING PRIVATE HOME OR DUPLEX IS DESTROYED BY A HURRICANE, WILL THE NONCONFORMING HOME OR DUPLEX BE ALLOWED TO BE REBUILT EXACTLY AS IT WAS?

Yes, if the owner applies for a building permit within one year. The zoning administrator may also administratively grant an additional one year extension for extenuating circumstances.

MIAMI 21 WILL ELIMINATE THE REQUIREMENT FOR A PUBLIC HEARING IN ORDER FOR AN OWNER TO REBUILD AFTER A NATURAL DISASTER.

ALL OTHER LEGAL NONCONFORMING STRUCTURES WHICH ARE DESTROYED BY A NATURAL DISASTER MUST FILE AN APPLICATION FOR ITS REPLACEMENT WITH THE PLANNING AND ZONING Advisory Board (PZAB) at a public hearing. PZAB may grant the replacement or reconstruction of the nonconforming structure.

A HOMEOWNER IN A SINGLE-FAMILY NEIGHBORHOOD HAS CONSTRUCTED (WITHOUT PERMITS) ADDITIONS TO HIS HOME WHERE TENANTS ARE HOUSED. WILL THE OWNER BE ALLOWED TO RETAIN THESE UNITS?

Illegal construction and use will continue to be illegal under the provisions of Miami 21; there is no change from the old to new code.

ARE INTERIOR RENOVATIONS FOR NONCONFORMING STRUCTURES ALLOWED UNDER THE MIAMI 21 CODE?

Yes.

PART II. USES

WHAT IS A NONCONFORMING USE?

An existing use allowed under the existing code, but which will not be allowed after the enactment of the Miami 21 Code.

Example:

A daycare is operating within a single family neighborhood. Under Miami 21, daycare businesses are no longer allowed. The existing daycare business is considered a legal nonconforming use, and will continue to be allowed to operate. No new daycare businesses will be allowed in the single family neighborhood after Miami 21 is enacted.

HOW LONG WILL THE NONCONFORMING USE BE ALLOWED TO CONTINUE?

The existing code allows for a nonconforming use to remain for twenty (20) years. An applicant may ask the Planning, Zoning and Appeals Board for an additional twenty (20) years. This extension provision remains the same in Miami 21.



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WON'T MIAMI 21 INCREASE THE NUMBERS OF NONCONFORMING USES?

No, nonconforming uses will be created in residential neighborhoods after the adoption of Miami 21. In some commercial areas, Miami 21 will actually *increase* the number of permitted uses. As a result, some previously nonconforming uses will become entirely legal.

Example:

There is a significant concentration of hotels/motels along the Biscayne Boulevard corridor. When "SD-9" zoning was previously enacted, it banned any additional hotel rooms. Miami 21 encourages the revitalization of the boulevard by allowing even more uses in the district for Biscayne Boulevard corridor, and includes hotels as a vital component towards that revitalization effort.

MIAMI 21 ADDS USES, AND WILL ACTUALLY LEGALIZE FORMERLY NONCONFORMING USES IN MOST OF THE PROPOSED TRANSECTS.

HAVEN'T THE USES PREVIOUSLY PERMITTED IN THE INDUSTRIAL ZONES (NOW CLASSIFIED AS D1 AND D2), BEEN REDUCED?

The uses in these districts have actually increased. Miami 21 proposes that the D-1 and D-2 use classifications incorporate all allowed uses in the existing General Commercial (C-2) and Industrial (I) categories.

Example:

The City of Miami encourages artists who own live/work studios. Artists may live and work in the new Miami 21 D1 district. **ONLY** when the work constitutes a hazard (for example, a sculptor with a foundry relying on open flame and high temperatures), will that work be restricted to the D2 transect.

PART III. OTHER QUESTIONS REGARDING NONCONFORMITIES

MIAMI 21 REQUIRES THAT LOTS BE A CERTAIN SIZE IN ORDER TO BE DEVELOPED. WHAT IF MY EXISTING LOT DOES NOT MEET THAT SIZE MINIMUM, CAN IT BE DEVELOPED?

Any lot that was legally platted prior to the enactment of Miami 21 will continue to be a buildable lot. **AFTER** the enactment of Miami 21, new plats will be required to comply with the Miami 21 standards

MIAMI 21 IS NOT CHANGING THE MINIMUM LOT SIZE REQUIRED AND LEGALLY PLATTED LOTS MAY CONTINUE TO BE BUILT UPON.

WILL SINGLE FAMILY HOMES BE REQUIRED TO ACCESS THEIR PROPERTIES THROUGH THE EXISTING ALLEYS?

No, Miami 21 encourages the use of alleys, but will not require it.



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PART IV. NONCONFORMITIES IN HISTORIC NEIGHBORHOODS

HOW DO THE NONCONFORMITY PROVISIONS OF MIAMI 21 AFFECT HISTORIC NEIGHBORHOODS?

The nonconformity rules that apply to historic neighborhoods will still apply under Miami 21. In fact, these nonconformity rules give distinct advantages to owners that preserve historic properties.

Chapter 23 of the Miami City Code contains the city's historic preservation code. Chapter 23 has undergone an extensive rewrite, and is accompanying the Miami 21 Code through the legislative process.

a. WAIVERS

In many historic buildings, non-conformities routinely exist, as they were built long before later zoning code provisions were enacted. As a result, some historic properties have never been in strict compliance with the zoning code, and may not be in strict compliance with the Miami 21 code either. As such they would remain "legally nonconforming."

However, because owners are encouraged not only to preserve their buildings, but also to adapt them to other uses when the original use has become obsolete, Chapter 23 includes special provisions for legally nonconforming structures.

Historic and Environmental Preservation (HEP) Board Authority: The revision to Chapter 23 allows the HEP Board to grant a waiver of up to 20% of the code requirements for setbacks, lot size, green space, and or/loading requirements.

The HEP Board may grant a waiver of up to 100% of the off-street parking requirement, when it can be demonstrated that parking can be reasonably accommodated by some other means, for example, adjacent parking lots or shared parking.

The HEP Board may grant a waiver to allow a "historic" sign to remain.

b. EXCEPTIONS

Exceptions in Chapter 23 address the use of the property. The HEP Board is allowed to grant an exemption to allow Bed and Breakfasts in residential transects T-4R, T-5R, and T-6R, which was previously accomplished through a public hearing process that created a historic preservation overlay district.

THIS PROCESS IS NOW GREATLY SIMPLIFIED